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The Bank of New York, as indenture trustee for the Encore  
Credit Receivables Trust 2005-2

**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

In Re:	)	CASE: 10-91305-13
	)	
JOSE JIMENEZ aka JOSE ALFREDO	)	CHAPTER 13
JIMENEZ dba BOOMERS CAR AUDIO and	)	
CORINA JIMENEZ aka CORINA R.	)	REF.: ASW-1
JIMENEZ	)	
	)	MOTION FOR RELIEF FROM
Debtors.	)	THE AUTOMATIC STAY AND
	)	DECLARATION OF JO-ANN
	)	GOLDMAN IN SUPPORT
	)	THEREON
	)	
	)	DATE: 06/08/10
	)	TIME: 10:00am
	)	CTRM: D
	)	U.S. Bankruptcy Court
	)	1200 I Street, Ste 4
	)	Modesto, California

The Motion of The Bank of New York, as indenture  
trustee for the Encore Credit Receivables Trust 2005-2  
respectfully shows as follows:

1. This Court has jurisdiction over this proceeding  
pursuant to 28 U.S.C. Sections 157 and 1334.
2. This Motion is brought pursuant to Local Rule 9014-  
1 (f)(1)(ii) written opposition, if any, to the granting of  
the Motion shall be in writing and shall be served on the

1 moving party and filed with the Clerk by the responding  
2 party at least fourteen (14) days preceding the noticed date  
3 of the hearing. Unless written opposition and supporting  
4 evidence are timely filed with the Court, without good  
5 cause, no party will be heard in opposition to the Motion at  
6 oral argument. Failure of the responding party to timely  
7 file written opposition may be deemed a waiver of any  
8 opposition to the granting of the Motion.

9       Opposition to the Motion shall be served on counsel for  
10 Movant as follows:

11 THE WOLF FIRM  
12 2955 Main Street, Second Floor  
13 Irvine, CA 92614

14       3. On April 8, 2010, a petition under Chapter 13 of  
15 the Bankruptcy Code was filed by the Debtors.

16       4. The Chapter Plan proposes to surrender the subject  
17 real property. The Plan has not yet been confirmed.

18       5. RUSSELL DEAN GREER, TRUSTEE is the Chapter 13  
19 Trustee for this case.

20       6. Movant is, and at all times herein mentioned was a  
21 corporation organized and existing under the laws of the  
22 United States.

23       7. Movant is the current beneficiary under a Deed of  
24 Trust by way of assignment which is security for a  
25 Promissory Note in the principal sum of \$217,600, with the  
26 Note all due and payable on May 1, 2035. The Deed of Trust  
27 encumbers real property commonly known as:

617 West Hatch Road, Modesto, CA 95351 ("Property")

1 and legally described as set forth in the Deed of Trust,  
2 which is attached to the Declaration of JO-ANN GOLDMAN.

3 8. The beneficial interest under the Deed of Trust is  
4 currently held by Movant by way of assignment. See  
5 Declaration of JO-ANN GOLDMAN.

6 9. There was a default under the terms of the Note and  
7 Deed of Trust and on April 6, 2010, Movant caused to be  
8 recorded a Notice of Default and Election to Sell.

9 10. The Property is not Debtors' principal residence.

10 11. At the time of the filing of this case, the pre-  
11 petition arrearages under the Note and Deed of Trust were  
12 approximately \$13,507.95.

13 12. The total amount due under the Note and Deed of  
14 Trust as of April 23, 2010, exclusive of post-petition  
15 attorneys fees and costs, was approximately \$218,473.40.

16 13. The Property is also encumbered by additional  
17 liens and arrearages which, when added to Movant's lien and  
18 arrearages, total approximately \$257,965.45.

19 14. The fair market value of the Property is  
20 approximately \$195,000.00.

21 15. The Debtors have no reasonable prospect for  
22 reorganization and the Property is not necessary for an  
23 effective reorganization.

24 16. Movant does not have, and has not been offered,  
25 adequate protection for its interest in the Property and the  
26 passage of time will result in irreparable injury to  
27

1 Movant's interest in the Property including, but not limited  
2 to, loss of interest and opportunity.

3 17. For all the reasons set forth herein, there is  
4 cause for relief from stay including, but not limited to,  
5 lack of adequate protection and the Debtors' failure to make  
6 the required Deed of Trust payments.

7 WHEREFORE, Movant prays for the judgment against  
8 Respondents as follows:

9 (1) That the automatic stay be terminated so that  
10 Movant may exercise or cause to be exercised any and all  
11 rights under the Deed of Trust and underlying Note and any  
12 and all rights after the foreclosure sale, including, but  
13 not limited to, the right to consummate foreclosure  
14 proceedings on the property and the right to proceed in  
15 unlawful detainer;

16 (2) For reasonable attorneys' fees as a secured claim  
17 under 11 U.S.C. Section 506(b);

18 (3) For the waiver of the 14 day stay pursuant to  
19 Bankruptcy Rule 4001(a)(3).

20 (4) For such other and further relief as the Court  
21 deems just and proper.

22 Dated: April 28, 2010

23  
24 /s/ Alan Steven Wolf  
25 ALAN STEVEN WOLF  
26 Attorneys for Movant  
27 The Bank of New York, as indenture  
trustee for the Encore Credit  
Receivables Trust 2005-2